

1 Paul Nicholas Boylan SBN 140098
PAUL NICHOLAS BOYLAN, ESQ.
2 POB 719
Davis CA 95617

3 Telephone: 530 297 7184
4 Facsimile: 530 297 7168
Email: pnboylan@gmail.com

5 Attorneys for Real Party in Interest THADEUS GREENSON and the People of California

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

7 **COUNTY OF HUMBOLDT**

8 **JUVENILE DIVISION**

9
10 IN THE MATTER OF
11 HORATIO M.,
A CHILD

Case No. JVI40252

**[PROPOSED] ORDER AFTER
HEARING**

12
13
14 THADEUS GREENSON

15 Real Party in Interest

16 Thadeus Greenson's Motion for Attorney's Fees and Costs was heard before this
17 Court on January 21, 2017, by Judge Christopher G. Wilson. Present at the hearing were
18 Paul Nicholas Boylan, counsel for the moving party, Thadeus Greenson, and Cyndy Day-
19 Wilson, counsel for the opposing party, the City of Eureka.

20 The Court, having reviewed all briefs and documents and having heard oral argument
21 orders as follows

22 1. Mr. Greenson's motion is **GRANTED** according to the terms contained in the
23 Court's order after hearing entitled RULING RE: ATTORNEY'S FEES, attached hereto and
24 is incorporated into this Order, and it is **HEREBY ORDERED** that:

25 2. This Order will be considered entered upon the Court's signature approving
26 the Order.

27 3. Within 30 days of entry of this Order, the City of Eureka shall pay Thadeus
28 Greenson's attorney, Paul Nicholas Boylan, a total fee and cost award of \$87,600.50.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____

By: _____
The Honorable Christopher G. Wilson
Superior Court Judge, Humboldt County

Approved as to form:

Dated: _____, 2017

FOR THE CITY OF EUREKA

By:
Cyndy Day-Wilson

PAUL NICHOLAS BOYLAN, ESQ.
POB 719
DAVIS, CALIFORNIA 95617

FILED

APR 14 2017 *pe*

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT

IN THE MATTER OF:

CASE NO. JV140252

RULING RE: ATTORNEY'S FEES

HORATIO M.

_____ /

This matter came before the Court for determination of attorney's fees and costs on appeal after petitioner Thadeus Greenson's successful appeal of this Court's ruling granting him access to video recording of the arrest of the minor herein. The appeal resulted in a published opinion, and the First District determined that fees and costs should be awarded for Mr. Greenson's efforts on appeal.

Initially the parties have debated the evidence this court should consider in determining fees. To that extent, this court will grant the request for judicial notice filed by Mr. Boylan on November 29, 2016, and the City's request filed January 9, 2017. As for the evidentiary objections by the City as to Mr. Greenson's declaration, the Court rules as follows:

///

N:\JV140252\sc

- 1 Objection #1 - sustained.
- 2 Objection #2 - sustained.
- 3 Objection #3 - sustained.
- 4 Objection #4 - overruled.
- 5 Objection #5 - sustained as to the last two sentences, otherwise overruled.
- 6 Objection #6 - sustained.
- 7 Objection #7 - sustained.
- 8 Objection #8 - sustained.
- 9 Objection #9 - sustained.
- 10 Objection #10 - sustained.
- 11 Objection #11 - sustained.
- 12 Objection #12 - sustained.
- 13 Objection #13 - sustained.
- 14 Objection #14 - overruled.
- 15 Objection #15 - overruled.
- 16 Objection #16 - overruled.
- 17 Objection #17 - overruled.

18 In this matter, Mr. Greenson, a local journalist, sought release of a City of Eureka
19 Police Department video depicting the arrest of a juvenile. The arresting officer was
20 accused of using excessive force, which resulted in an internal affairs investigation and
21 a criminal complaint (which was ultimately dismissed) against the arresting officer.
22 Mr. Greenson published an article regarding the incident and resulting proceedings and
23 sought to obtain the video itself. The County of Humboldt, on behalf of the Probation
24 Department, in possession of the video as a juvenile court record, and the City of
25 Eureka refused to release the video.

1 Mr. Greenson then filed a petition in juvenile court pursuant to Welfare and Institutions
2 Code section 827 to obtain a copy of the video. In response, the City of Eureka
3 asserted, among other things, that the video was protected from discovery under the
4 Pitchess rule for discovery of police personnel files. After this court ordered a portion of
5 the requested videos released, the City appealed, but only on the Pitchess issue. *City*
6 *of Eureka v. Superior Court of Humboldt County (Greenson)* (2016) 1 Cal.App.5th 755,
7 765. After the Court of Appeal held in favor of Mr. Greenson and ordered its opinion
8 published, the City sought depublication of the decision, which was ultimately denied.
9 Mr. Greenson retained attorney Paul Boylan to represent him on appeal and post
10 appeal proceedings. Before the Court is his request for fees as ordered by the Court of
11 Appeals.

12 Mr. Boylan claims he is entitled to fees either under the Public Records Act or
13 under the Private Attorney General Act (PAGA). The wording of the Public Records Act
14 is clear: It allows recovery of attorney's fees for successful claims under the PRA: "The
15 court shall award costs and reasonable attorney fees to the plaintiff should the plaintiff
16 prevail in litigation filed pursuant to this section." Govt Code section 6259(d).
17 Greenson's request for the video was not brought under the PRA, but as a petition
18 under Welfare and Institutions Code section 827 (release of juvenile records).

19 Mr. Boylan contends that this case was the functional equivalent of a PRA case.
20 Though there are similarities in that Mr. Greenson sought the release of government
21 records, there is no case authority cited that supports the proposition that PRA fees can
22 be awarded in a case not brought directly under the PRA.

23 ///

24 ///

25 ///

1 Under the Private Attorney General Act (Code of Civil Procedure section 1021.5),
2 a party can recover attorney's fees when:

- 3 (1) plaintiff's action "resulted in the enforcement of an important right
4 affecting the public interest."
- 5 (2) "a significant benefit, whether pecuniary or non-pecuniary, has
6 been conferred on the general public or a large class of persons"
7 and
- 8 (3) "the necessity and financial burden of private enforcement are
9 such as to make the award appropriate."

10 CCP section 1021.5; *Community Youth Athletic Center v. City of*
11 *National City* (2013) 220 Cal.App.4th 1385, 1447-48 (discussing both
12 PAGA and PRA).

13 As Mr. Greenson points out, the value of obtaining release of the video impacts
14 "whether these public institutions can be trusted to act in the public interest." Greenson
15 Decl. Par. 8. Further, according to Mr. Greenson:

16 "Mr. Boylan's work resulted in a published opinion binding on all California
17 superior courts and upon all law enforcement agencies. Due to the appellate service
18 Mr. Boylan provided to me, the City - and all other California Cities, Counties and
19 District Attorneys are prevented from injuring the public in this manner again." Greenson
20 Decl. Par. 17 (12/14/2016).

21 Obtaining the video might have provided Mr. Greenson some private benefit -
22 obtaining more readers and thereby more subscriptions (although the NorthCoast
23 Journal is available for free) or advertising revenue, for example. However, the public
24 significantly benefits by being able to obtain police video of an arrest, especially where
25 there are suspicions or allegations of excessive force.

26 An award on the "private attorney general" theory is appropriate when the cost of
27 the claimant's legal victory transcends his personal interest, that is, when the necessity
28 for pursuing the lawsuit placed a burden on the plaintiff "out of proportion to his
29 individual stake in the matter." *In re Conservatorship of Whitley* (2010) 50 Cal.4th 1206,

1 1215; and see *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311 (fee award proper even
2 though action enforced existing rights and was not landmark case, where underlying
3 litigation clarified application of existing law, affected large class of persons, and general
4 public benefited from enforcement of fundamental constitutional rights). The financial
5 burden of private enforcement is reflected here in the fees charged by a private attorney
6 to defend against the City's appeal (though Mr. Greenson was able to find
7 representation on a contingent fee application basis). The Court finds that Mr. Boylan
8 has established a right to recover fees for his appellate work from the City of Eureka
9 under the PAGA, CCP section 1021.5.

10 In awarding statutorily based attorneys fees, the Court is to calculate the total
11 amount of fees by multiplying the reasonable number of hours times a reasonable
12 hourly rate, and then decide whether to adjust that amount up or down by applying a
13 multiplier. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138; *Press v. Lucky Stores, Inc.*
14 (1983) 34 Cal.3d 311, 322 ('Ultimately, the trial judge has discretion to determine the
15 value of professional services rendered in his or her court. However, since the
16 determination of the lodestar figure is so fundamental to calculating the amount of the
17 award, the exercise of that discretion must be based on the lodestar adjustment
18 method") (internal quotation marks omitted).

19 Mr. Boylan requests an hourly rate of \$650.00, contending that it is a reasonable
20 rate (if not low) for appellate work in the First District Court of Appeal, and it is a
21 reasonable rate for an attorney with his appellate experience. The City contends that a
22 reasonable rate is that which the attorneys for the City charge: \$175.00 per hour for
23 outside counsel and \$300.00 per hour for the City Attorney. Mr. Boylan has been
24 awarded fees in another case in this Court at \$400.00 per hour (though that case did
25

1 not involve appellate work (*Titus v. Humboldt County Fair*, Humboldt County Superior
2 Court Case number CV150271.

3 Though Mr. Boylan appears to have extensive experience in Public Record Act
4 cases, as well as in other matters involving public agencies, he apparently is not
5 certified by the State Bar as an appellate specialist. Further, as the City points out,
6 many of the hourly rates presented by Mr. Boylan as comparable are from firms based
7 in the San Francisco area, which have significantly higher overhead than attorneys
8 practicing in the more rural parts of the First District Court of Appeal.

9 The City contends that Mr. Greenspan could have found attorneys in Humboldt
10 County who could have handled the appeal at a much lower hourly rate. In response,
11 Mr. Greenson states that the Humboldt County attorneys who were qualified to handle
12 this type of case were not available. Greenson Decl. Par. 2-5 (12/14/2016).

13 On balance, \$650 per hour seems high for the type of work Mr. Boylan
14 performed, but it is probably not unconscionable or an abuse of discretion to award fees
15 at that hourly rate. *Press v. Lucky Stores, Inc. supra*, 34 Cal.3d at 322 ("Ultimately, the
16 trial judge has discretion to determine 'the value of professional services rendered in his
17 (or her) court....'"). There are attorneys in Humboldt County who charge \$650 per hour
18 for specialized work (such as elder abuse claims), though those attorneys are
19 recognized as specialists in their particular fields, whereas Mr. Boylan does not offer
20 evidence of such recognition or accolades for his appellate work. In light of the rate
21 granted Mr. Boylan in the other fee application in Humboldt County, his lack of
22 certification as an appellate specialist, and the rates charged by other attorneys
23 representing the City, the Court determines that appropriate rate of compensation in this
24 matter to be \$500.00 per hour.

25 ///

N:\JV140252\sce

1 The second leg of the lodestar calculation is reasonable hours worked. Overall,
2 Mr. Boylan claims 125.3 hours of attorney time in handling the appeal (which translates
3 to over three weeks of full time work). Those hours include time spent addressing
4 procedural issues, researching and drafting Mr. Greenson's opening brief, preparing for
5 oral argument and resisting the City's efforts to depublish the case. (Mr. Boylan claims
6 an additional 84.3 hours for preparing his fee application, discussed *infra*).

7 The City raises a number of objections to the time claimed by Mr. Boylan. First,
8 Mr. Boylan's time records have numerous entries for one-tenth of an hour, many on the
9 same day and often for tasks that could probably have been completed in less than six
10 minutes. Though billing time in one-tenth of an hour segments seems to be an
11 acceptable practice (compared to billing in quarter-time segments), the manner in which
12 Mr. Boylan employs it resembles a fixed fee for a particular task, instead of actual time
13 worked. For example, the billing records are replete with Mr. Boylan charging one-tenth
14 of an hour for reading an email, and then another one-tenth of an hour to respond to
15 each email.

16 Even at the reduced rate of \$500 per hour, each one-tenth of an hour segment
17 represents a fee of \$50, or \$8.33 per minute. If reading an email actually took two
18 minutes, the fee would be \$16.67; by billing in one-tenth segments, the attorney collects
19 an extra \$33.33. Or, if reading and then responding to an email took four minutes, the
20 actual time charged should be \$33.32, but under Mr. Boylan's methodology, the client
21 would be billed for .2 of an hour or \$100 for an extra fee of \$66.68. However, the courts
22 have not rejected claims for fees that are billed in one-tenth of an hour segments, unlike
23 fee claims billed in one-quarter hour segments or that are "block billed". See *eg. Welch*
24 *v. Metropolitan Life Ins. Co.* (9th Cir. 2007) 480 F. 3d 942, 949, and *In re Tom Carter*
25 *Enterprises, Inc.* (Bankr. C.D. Cal. 1985) 55 B.R. 548, 549. According to the City, there

1 are 14.9 hours of time that was billed separately in one-tenth hour segments. The City
2 suggests cutting those time entries in half, for a reduction of 7.5 hours pre-remittitur. I
3 agree. The City also contends that another .2 of an hour of time was spent to file an
4 amicus letter (on behalf of CPNA) and 1.7 hours in addressing procedural issues
5 involving Humboldt County and not the City. The Court will grant both reductions.

6 The City also argues that the time charged for preparing the respondent's brief
7 and oral argument were too high, based on the length of the appellate brief and what
8 the City contends is duplicative research. However, the City does not offer evidence
9 that the work was duplicative, whereas Mr. Boylan expressly states that it was not.
10 Further, even a short appellate brief may require a lot of time to plan, research, draft,
11 and redraft.

12 The City cites to Government Code section 38773.5 for the proposition that a
13 prevailing party in an action against the City cannot recover more in fees than what the
14 City incurred, Suppl.Decl. of Cyndy Day-Wilson Par. 16. However, that section is
15 expressly limited to ordinances for abatement of a nuisance, and has no application to
16 this action. On the other hand, if Mr. Boylan's special knowledge in this area justifies his
17 requested rate of \$650 per hour, one would expect that it would take him less time to
18 research and brief the issues compared to an attorney who does not possess such
19 specialized knowledge.

20 Based upon the foregoing, the Court will award to Mr. Boylan 115.9 hours at
21 \$500.00 per hour for a total pre-fee application lodestar of \$57,950.00.

22 The final step in the lodestar calculation is applying a multiplier, if appropriate.
23 The Court is not required to apply a fee enhancement to the basic lodestar figure,
24 although it retains discretion to do so in the appropriate case. *Ketchum v. Moses* (2001)
25 24 Cal.4th 1122, 1138. A multiplier can be used to account for a number of different

1 factors including: 1) the time spent and the reasonable hourly compensation of each
2 attorney involved in the presentation; 2) the novelty and difficulty of the questions
3 involved, and the skill displayed in presenting them; 3) the extent to which the nature of
4 the litigation precluded other employment by the attorneys; 4) the contingent nature of
5 the fee award, both from the point of view of eventual victory on the merits and the point
6 of view of establishing eligibility for an award; 5) the fact that an award against the City
7 would ultimately fall upon the taxpayers; 6) the fact that the attorneys here did not
8 receive public and charitable funding for the purpose of bringing lawsuits of the
9 character here involved; 7) the fact that the award would inure to the benefit of the
10 attorneys involved; and 8) any other relevant factors work on unusually difficult matters
11 or to adjust for contingency risk. *Lucchesi v. City of San Jose* 91980 104 Cal. App. 3d
12 323, 336.

13 Mr. Boylan requests a multiplier of 1.5 (or an additional .5) to account for the risk
14 of not being paid. The City argues that the lodestar should be reduced by half (a
15 "negative multiplier"), because the court of appeal did not cite any cases that Mr. Boylan
16 cited in his brief, and Mr. Boylan argued for the wrong standard of review.

17 Though the fact that a public entity will be paying a fee award is a factor to
18 consider in deciding on a fee enhancement multiplier *Lucchesi, supra*, at least one court
19 has held that it would be improper to reduce a lodestar calculation solely because the
20 award will have to be paid by taxpayers:

21 "Allowing properly documented attorneys' fees to be cut simply because a losing
22 party is a governmental entity would defeat the purpose of the private attorney general
23 doctrine codified in Code of Civil Procedure section 1021.5 and would also incentivize

24 ///

25 ///

1 governmental entities to negligently or deliberately run up a claimant's attorneys' fees,
2 without any concern for consequences.”

3 *Rogel v. Lynwood Redevelopment Agency* (2011) 194 Cal.App.4th 1319, 1332

4 A multiplier of 1.25 in recognition of a contingency fee arrangement was affirmed
5 in *Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1399. A lower multiplier
6 can also be justified based on the relatively high hourly rate and the large number of
7 hours billed. In this matter, the Court will use a multiplier of 1.25 to account for the risk
8 that Mr. Boylan would not be paid at all had the Court of Appeal ruled against
9 Mr. Greenson.

10 Mr. Boylan also claims 84.3 hours for work on the fee application. Awarding fees
11 for preparing a fee application under PAGA has been expressly approved by California
12 courts. *Serrano v. Unruh* (1982) 32 Cal.3d 621, 635 (noting that, “Prevailing parties are
13 compensated for hours reasonably spent on fee-related issues. A fee request that
14 appears unreasonably inflated is a special circumstance permitting the trial court to
15 reduce the award or deny one altogether.”)

16 The hours claimed by Mr. Boylan for working on the fee application seem
17 unreasonably high—more than two weeks full-time work, which is more than half the
18 time he spent on the appeal itself. As the City points out, the hourly rate comparables
19 used in Mr. Boylan's fee application are a compilation of declarations used in other
20 matters. See eg., Pearl Declaration (Ex. 4 to Boylan Decl.), which is a copy of a
21 document filed in Alameda County Superior Court in 2014. Assembling those
22 declarations may have taken some clerical time, but should not have taken much
23 attorney time.

24 The City also objects to the “fee on fee” application on the grounds that
25 Mr. Boylan never pursued an informal resolution of his fee claim with the City. Though

1 there is some dispute as to whether there were any meaningful discussions between
2 the parties, it appears that there were at least some preliminary discussions which were
3 not pursued. Further, the City does not cite any authority for the proposition that a party
4 must first discuss fees with a public entity prior to filing a fee application. Based upon
5 the foregoing, the Court will reduce the hours attributed for the fee application to 30
6 hours at the rate of \$500 per hour. This results in a fee award of \$15,000.00 for the
7 preparation of the fee application.

8 In conclusion, the Court orders pre-fee hours of 115.9 at \$500.00 per hour for a
9 total of \$57,950. A multiplier of 1.25 is applied for a total pre fee award of \$72,437.50.
10 To this is added \$15,000.00 for the fee application hours and then \$163 in costs for a
11 total fee and cost award of \$87,600.50. Mr. Boylan is to prepare an Order After Hearing
12 consistent with the Court's ruling herein, approved as to form by the City.

13
14
15
16
17
18
19
20
21
22
23
24
25

Dated: April 14, 2017

CHRISTOPHER G. WILSON

Christopher G. Wilson, Judge of the Superior Court

PROOF OF SERVICE BY MAIL

I am a citizen of the United States, over 18 years of age, a resident of the County of Humboldt, State of California, and not a party to the within action; that my business address is Humboldt County Courthouse, 825 5th St., Eureka, California, 95501; that I served a true copy of the attached RULING RE: ATTORNEY'S FEES by placing said copies in the attorney's mail delivery box in the Court Operations Office at Eureka, California on the date indicated below, or by placing said copies in envelope(s) and then placing the envelope(s) for collection and mailing on the date indicated below following our ordinary business practices. I am readily familiar with this business practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service at Eureka, California in a sealed envelope with postage prepaid. These copies were addressed to:

Cyndy Day-Wilson, Eureka City Attorney, Court Operations Box #63

Paul Boylan, Box 719, Davis, CA 95617

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on the 14th day of April, 2017, at the City of Eureka, California.

Kim M. Bartleson, Clerk of the Court

By Susan C. Edwards
Deputy Clerk